

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/811,695
Inventor(s) : Mark James Kline, et al.
Filed : March 29, 2004
Art Unit : 3761
Examiner : Michael G. Bogart
Docket No. : 9595
Confirmation. No. : 1368
Customer No. : 27752
Title : Disposable Absorbent Articles Having Co-Elongation

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief appeals the decision in the Office Action mailed May 14, 2010.

A timely Notice of Appeal was filed on August 16, 2010.

This Brief is filed with a one month extension.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 21-23, 25-27, 29-30, 31-33, 35-36, and 39-40 stand rejected.

Claims 21-23, 25-27, 29-30, 31-33, 35-36, and 39-40 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the last Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 21 recites a front-fastenable disposable wearable absorbent article (#20 in Fig. 1, #120 in Figs. 2, 9, 11, #220 in Fig. 3, #320 in Fig. 4, #420 in Fig. 5, #520 in Fig. 6, #620 in Fig. 7, #920 in Fig. 12, page 1, lines 13-18). The article comprises a longitudinal axis (#1000 in Figs. 1-7, 9, page 7, line 2) and a back waist region (#38 in Fig. 1, #138 in Figs. 2, 9, 11, #238 in Fig. 3, #338 in Fig. 4, #438 in Fig. 5, #538 in Fig. 6, #638 in Fig. 7, page 7, lines 3-5). The back waist region includes a first side ear (#697 in Figs. 7, 9, 10a, page 20, lines 6-8) on a first side of the longitudinal axis and a second side ear (#697 in Figs. 7, 9, 10a, page 20, lines 6-8) on a second side of the longitudinal axis. The back waist region also includes an intermediate stretch region (#170 in Figs. 2, 11, #270 in Fig. 3, #370 in Fig. 4, #470 in Fig. 5, #570 in Fig. 6, #670 in Figs. 7, 9, 10a, page 21, lines 15-23). The intermediate stretch region is disposed primarily in the back waist region between the side ears. The intermediate stretch region has an intermediate lateral tensile modulus. The first side ear includes a first fastener (#355 in Fig. 4, #655 in Figs. 7, 9, 10a, page 20, lines 6-16) and a first side ear stretch region. The first side ear stretch region has a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus (page 21, line 23 – page 22, line 2).

Independent claim 31 recites a pant-type disposable wearable absorbent article (#720 in Fig. 8, page 11, lines 7-25, page 20, lines 21-25). The article comprises a longitudinal axis (#1000 in Fig. 8, page 20, line 25). The article also comprises a first side panel (#797 in Figs. 8, 10b, page 22, lines 3-9) on a first side of the longitudinal axis and a second side panel (#797 in Figs. 8, 10b, page 22, lines 3-9) on a second side of the longitudinal axis. The article further comprises an intermediate stretch region (#770 in Fig. 8, page 21, lines 8-11, page 22, lines 3-9) disposed primarily in a back waist region (#738 in Fig. 8, 10b) of the article between the side panels. The intermediate stretch region has an intermediate lateral tensile modulus. The first side panel includes a first side panel stretch region having a first side panel lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus (page 21, lines 8-11, and page 21, line 23 – page 22, line 2).

The appealed claims are argued all together.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1) Whether or not claims 21 and 31 were properly rejected as anticipated by published patent application WO 97/47264 A1 ("Lodge").

2) Whether or not claims 21 and 31 were properly rejected as anticipated by US patent 5,221,274 ("Buell").

3) Whether or not claims 23, 27, and 33 were properly rejected as obviated by the Lodge reference.

ARGUMENTS

Claim 21 was improperly rejected as anticipated by the Lodge reference, because the Lodge reference does not disclose a front-fastenable diaper with an intermediate stretch region disposed in the location required by the claim.

Claim 21 is to a "disposable wearable absorbent article" – that is, a disposable diaper. The diaper has first and second side ears in a "back waist region." When the diaper is worn, the ears in the back wrap around the sides of the wearer and fasten to the front of the diaper. Thus, the diaper is "front-fastenable."

The first side ear includes a "first side ear stretch region having a first side ear lateral tensile modulus." This is a measure of how much the first side ear resists being stretched laterally (e.g. sideways).

The diaper of claim 21 also has an "intermediate stretch region." The intermediate stretch region has an "intermediate lateral tensile modulus." This is a measure of how much the intermediate stretch region resists being stretched laterally.

In claim 21, the first side ear lateral tensile modulus is "greater than or about equal to" the intermediate lateral tensile modulus. When the first side ear lateral tensile modulus is greater than the intermediate lateral tensile modulus, the first side ear resists being stretched laterally more than the intermediate stretch region. When the first side ear lateral tensile modulus is about equal to the intermediate lateral tensile modulus, the first side ear resists being stretched laterally to about the same degree as the intermediate stretch region.

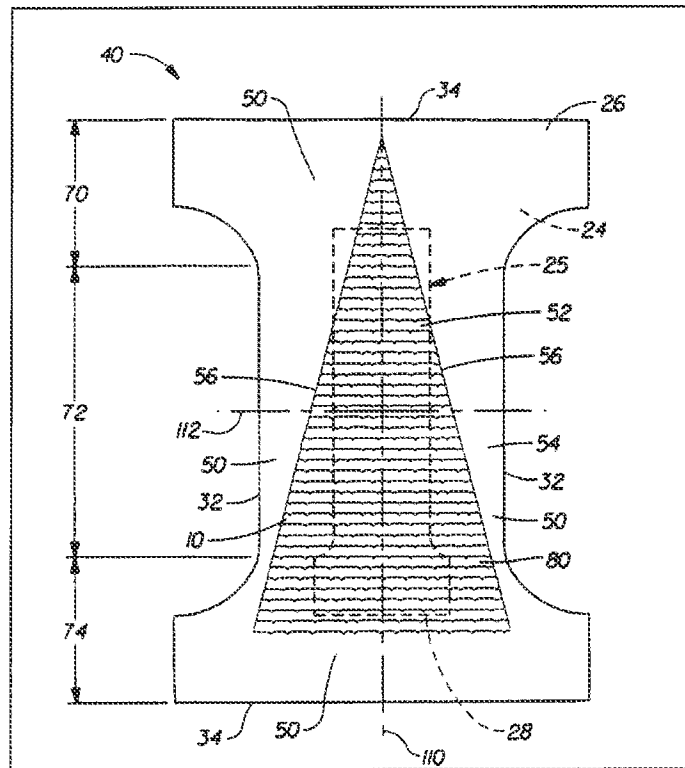
element(s) is formed (joined and positioned) in a particular place or position as a unitary structure.” (Page 5, lines 28-30.) However, the Applicant has not provided a particular definition for the term “primarily.” So, the plain and ordinary meaning applies.

The Applicant submits that, in this context, the broadest reasonable interpretation of the phrase “disposed primarily” is: having a majority of an element positioned in a particular place. So, when claim 21 recites “an intermediate stretch region disposed primarily in the back waist region, between the side ears,” the claim requires that a majority of the intermediate stretch region is positioned both in the back waist region and between the side ears.

The last Office Action cited the embodiment of Figure 17 of the Lodge reference against claim 21. (Page 3, point 5.) In particular, the last Office Action cited elongate zone 52 of the Lodge reference against the “intermediate stretch region” of claim 21. The last Office Action stated:

Applicant’s arguments filed April 26, 2010 have been fully considered but they are not persuasive. As to the argument that Lodge does not disclose an intermediate stretch region disposed primarily in the back waist region, the applicant is referred to Fig. 17 of Lodge wherein the embodiment depicted has an elongate zone 52 that is triangular with a greater portion of the area of the triangle residing in the back waist region, thus it is the examiner’s position that the intermediate stretch region is disposed primarily in the back waist region.

(Page 2, point 2.) Figure 17 of the Lodge reference is provided below.

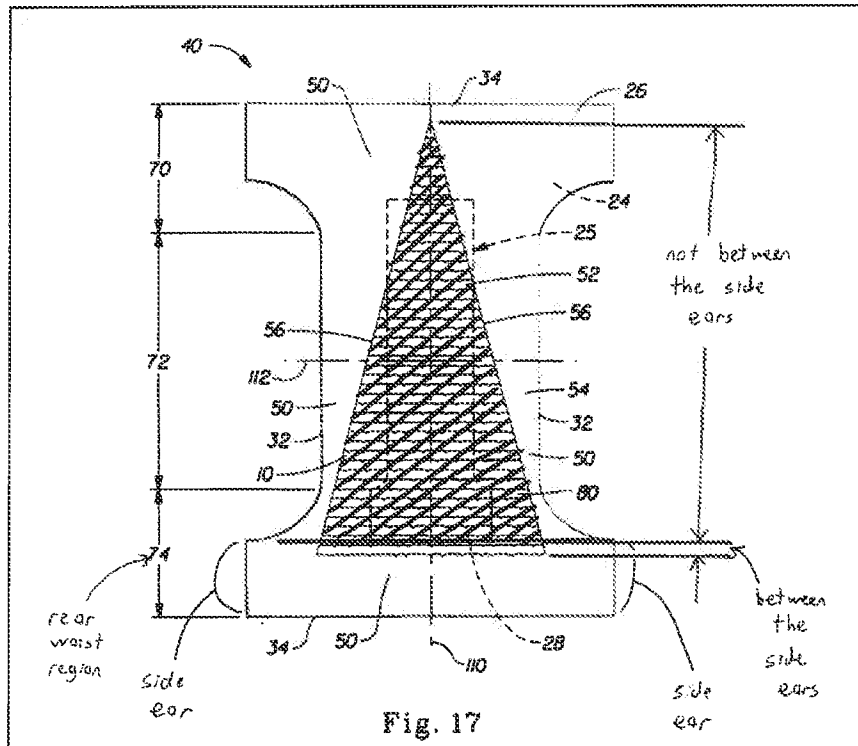


The Lodge reference states in relevant part that “As shown in Figures 11-17....the formed substrate 80 comprises an elongated zone 52.” (Page 21, line 36 – page 22, line 1.) From the Applicant’s review, the Lodge reference does not appear to provide a description of the precise location of the elongated zone 52.

As an initial matter, the Applicant points out that, in general, prior art drawings cannot be relied upon to show particular sizes. MPEP § 2125. Thus, the figures of the Lodge reference, by themselves, cannot be used to show how much of the elongated zone 52 is disposed in a particular location. As a result, the Applicant submits that Figure 17 of the Lodge reference, by itself, does not disclose “an intermediate stretch region disposed primarily in the back waist region, between the side ears,” as recited in claim 21. For this reason, the Lodge reference does not anticipate independent claim 21, or the claims that depend therefrom.

However, in the alternative, and for the sake of argument, Applicant will assume that Figure 17 of the Lodge reference can be relied upon to show how much of the elongated zone 52 is disposed in a particular location. So, in Figure 17, how much of the

intermediate stretch region is positioned both in the back waist region and between the side ears? An annotated version of Figure 17 is provided below with labels for the rear waist region 74 and the side ears.



The annotated version of Figure 17 includes a lateral reference line on the inboard edge of the side ears in the rear waist region. The reference line serves as a boundary between: 1) the portion (unhatched) of the elongated zone 52 that is in the rear waist region 74 and between the side ears, and 2) the portion (hatched) of the elongated zone 52 that is not in the waist region and between the side ears.

From the annotated version of Figure 17, it is clear that only a small fraction of the elongated zone 52 lies between the side ears. If Figure 17 can be taken as drawn to scale, then measurements show that only about 6% of the elongated zone 52 lies between the side ears.

So, if the elongated zone 52 reads on the intermediate stretch region of claim 21, then the embodiment of claim 17 of the Lodge reference does not disclose an intermediate stretch region wherein the majority of the intermediate stretch region is positioned both in

the back waist region and between the side ears. As a result, the Lodge reference does not disclose “an intermediate stretch region disposed primarily in the back waist region, between the side ears,” as recited in part in claim 21. For this reason, the Lodge reference does not anticipate independent claim 21, or any of the claims that depend therefrom.

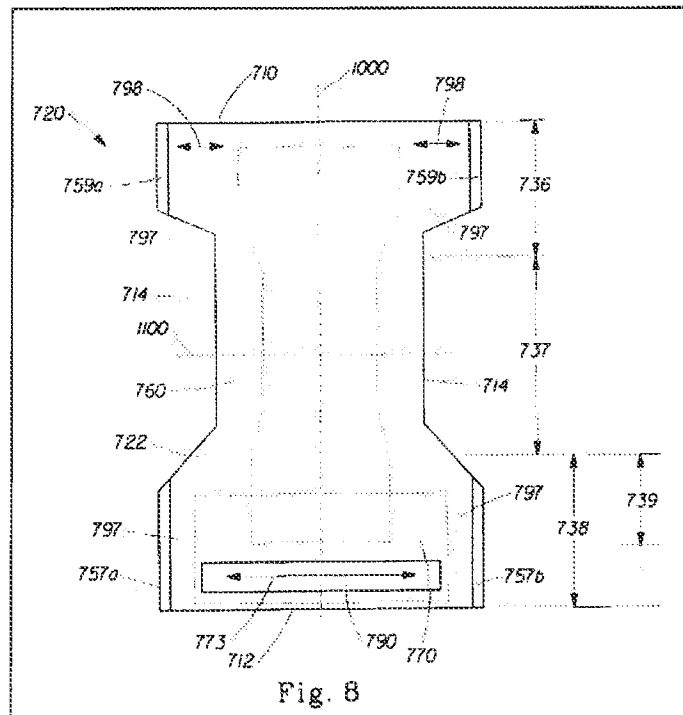
Claim 31 was improperly rejected as anticipated by the Lodge reference, because the Lodge reference does not disclose a pant-type diaper with an intermediate stretch region disposed in the location required by the claim.

Like claim 21, claim 31 is also to a “disposable wearable absorbent article” — that is, a disposable diaper. However, the diaper of claim 31 is not a “front-fastenable” diaper it is a “pant-type” diaper. So, instead of having first and second side ears in a back waist region, the diaper of claim 31 has first and second side panels in a “back waist region.”

Similar to the first side ear of claim 21, the first side panel of claim 31 has a “first side panel stretch region having a first side panel lateral tensile modulus.” As in claim 21, the intermediate stretch region of claim 31 has an “intermediate lateral tensile modulus.” Similar to the first side ear of claim 21, the first side panel of claim 31 includes “a first side panel stretch region having a first side panel lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus.”

The intermediate stretch zone of claim 31 is disposed in a particular location that is similar to the location of the intermediate stretch zone of claim 21. Claim 21 recites “an intermediate stretch region disposed primarily in the back waist region, between the side ears.” Claim 31 recites “an intermediate stretch region disposed primarily in a back waist region of the article between the side panels.” So, the intermediate stretch zone of claim 31 is disposed in an analogous location for a pant-type diaper; disposed between side panels, instead of between side ears.

The Applicant’s Figure 8 (provided below) shows “a plan view of...a pant” type diaper. (Page 4, line 11.)



In Figure 8, the intermediate stretch region corresponds with backsheet zone 770, which is disposed in the back waist region 738 and between the side panels 797. (Page 20, line 21 – page 21, line 11.) As explained in the Applicant’s specification, an intermediate stretch region in a pant-type diaper functions in a similar way and provides a similar benefit, as an intermediate stretch region in a front-fastenable diaper. (Page 22, lines 3-9.)

As discussed above, when claim 31 recites “an intermediate stretch region disposed primarily in a back waist region of the article between the side panels,” the claim requires that a majority of the intermediate stretch region is positioned both in the back waist region and between the side panels.

The last Office Action also cited the embodiment of Figure 17 of the Lodge reference against claim 31. (Page 5, first paragraph.) The last Office Action also cited elongate zone 52 of the Lodge reference against the “intermediate stretch region” of claim 31.

As argued above, according to the general rule, the figures of the Lodge reference, by themselves, cannot be used to show how much of the elongated zone 52 is disposed in a particular location. As a result, the Applicant submits that Figure 17 of the Lodge

reference, by itself, does not disclose “an intermediate stretch region disposed primarily in a back waist region of the article between the side panels,” as recited in claim 31. For this reason, the Lodge reference does not anticipate independent claim 31, or the claims that depend therefrom.

As argued above, in the alternative, and for the sake of argument, Applicant will assume that Figure 17 of the Lodge reference can be relied upon to show how much of the elongated zone 52 is disposed in a particular location. From the annotated version of Figure 17 (provided above), it is clear that only a small fraction of the elongated zone 52 lies between the side ears. As a result, the Lodge reference does not disclose “an intermediate stretch region disposed primarily in a back waist region of the article between the side panels,” as recited in claim 31. For this reason, the Lodge reference does not anticipate independent claim 31, or any of the claims that depend therefrom.

Claims 21 and 31 were improperly rejected as anticipated by the Buell reference, because the Buell reference does not disclose an intermediate stretch region disposed in the location required by the claims.

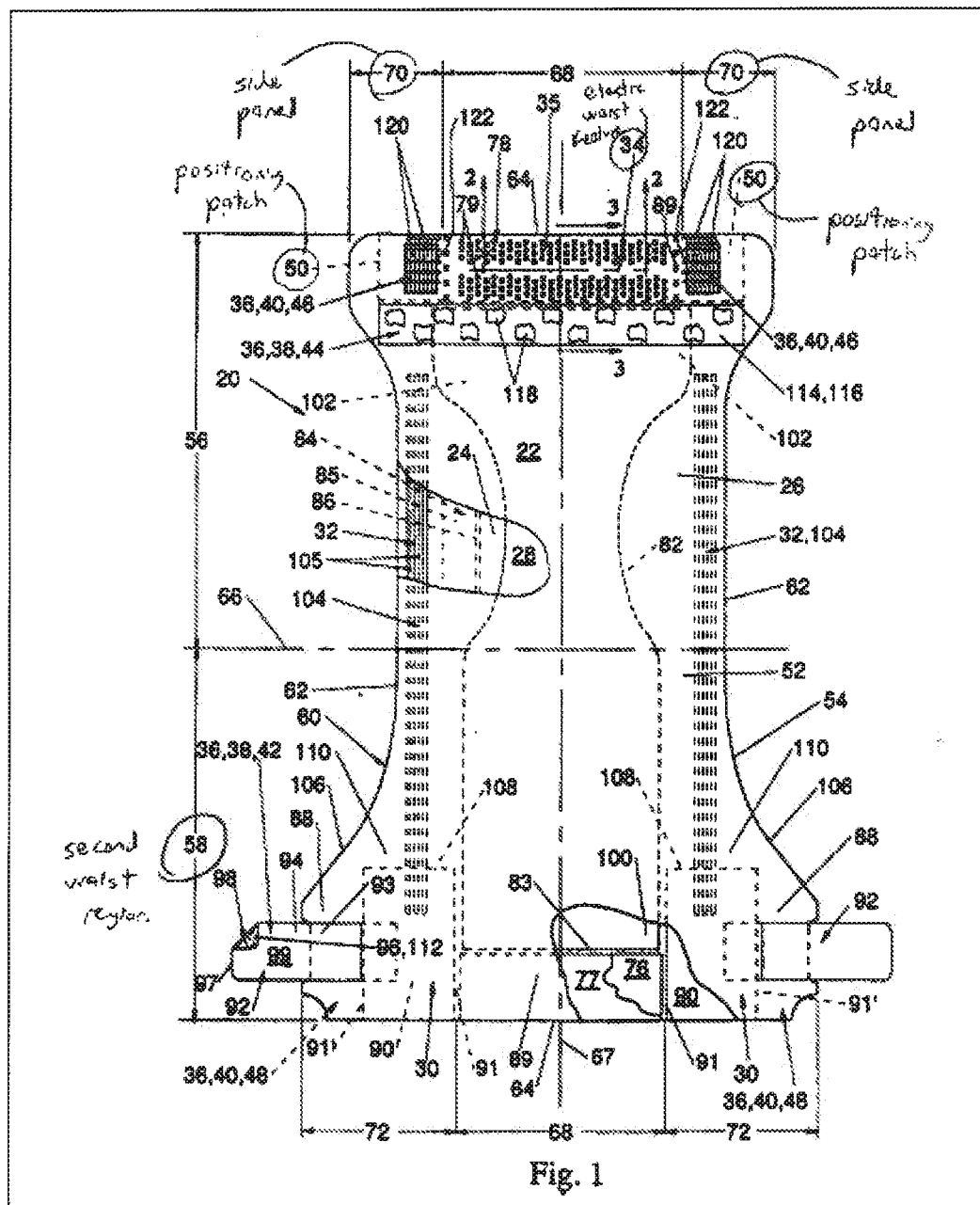
As explained in detail above, claim 21 recites in part a diaper with “an intermediate stretch region disposed primarily in the back waist region, between the side ears.” Claim 31 recites in part a diaper with “an intermediate stretch region disposed primarily in a back waist region of the article between the side panels.”

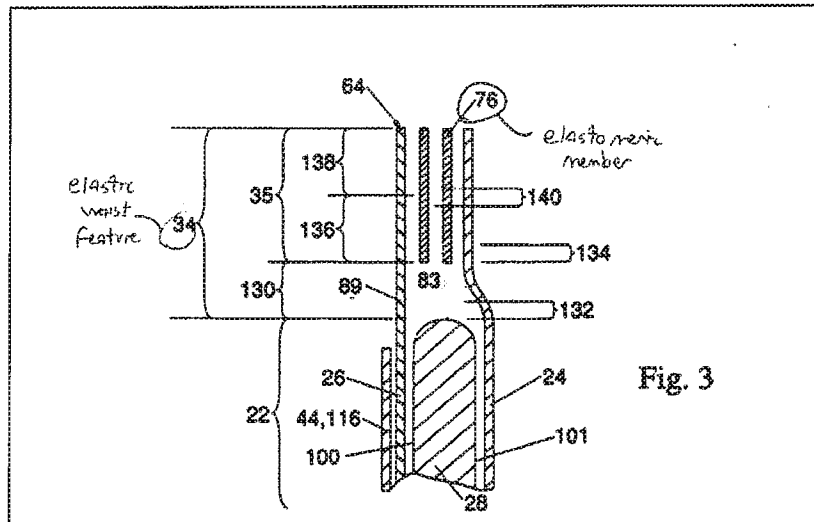
The last Office Action cited the Buell reference against claims 21 and 31. (Page 6, point 6 and page 7, third paragraph.) The last Office Action stated:

With respect to claim 21: Buell discloses a front-fastenable disposable wearable absorbent article 20, comprising: a longitudinal axis and a back waist region 58 that includes: a first side ear on a first side of the longitudinal axis; a second side ear on a second side of the longitudinal axis; and an intermediate stretch region, namely an elastic waist feature 34 including elastomeric member 76, disposed primarily in the back waist region 58, between the side ears 70 and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Examiner’s position is based on Buell’s disclosure that the elastic waist feature contains both the backsheet material and an elastomeric material 76 whereas the first side ear contains only the backsheet and topsheet materials and a positioning patch 50 or 650 that

imparts additional stiffness to reduce folding during wear. ('274, Col. 51, line 65 – Col. 52, line 11) An elastomeric material by its nature has a lower tensile modulus than a non-elastomeric material, thus the first side ear, together with the stiffness-imparting positioning patch 50/650 necessarily has a higher tensile modulus than the intermediate region.

(Point 6, pages 6-7.) Annotated versions of Figure 1 and 3 of the Buell reference are provided below, with the cited elements labeled.





The Applicant agrees with the characterization in the last Office Action that the second waist region 58 is the back waist region. However, the Applicant points out that the elements (34, 50, 70, and 76) cited by the last Office Action against the intermediate stretch regions are not disposed “in the back waist region” as required by the claims, but are disposed in the front waist region 56.

As a result, the Lodge reference does not disclose an intermediate stretch region disposed primarily in a “back waist region,” as recited in part in each of claims 21 and 31. For this reason, the Lodge reference does not anticipate independent claim 21 or 31, or any of the claims that depend therefrom.

Claims 24, 27, and 33 were improperly rejected as obviated by the Lodge reference, because the Lodge reference does not describe, teach, or suggest a front-fastenable diaper with an intermediate stretch region disposed in the location required by independent claims 21 and 31.

As argued above, according to the general rule, the figures of the Lodge reference, by themselves, cannot be used to show how much of the elongated zone 52 is disposed in a particular location. As a result, the Applicant submits that Figure 17 of the Lodge reference, by itself, does not describe, teach, or suggest an intermediate stretch region disposed primarily in a “back waist region” as recited in claims 21 and 31. For this reason, the Lodge reference does not obviate independent claims 21 or 31, or claims 24, 27, and 33 that depend therefrom.

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Further, if one continues with the assumptions that the elongated zone is an intermediate stretch zone and that Figure 17 of the Lodge reference can be relied upon to show how much of the elongated zone 52 is disposed in a particular location, then the Lodge reference clearly teaches away from the inventions of claims 21 and 31, by illustrating an intermediate stretch zone that is disposed primarily in a different location. For this reason also, the Lodge reference does not obviate independent claims 21 or 31, or claims 24, 27, and 33 that depend therefrom.

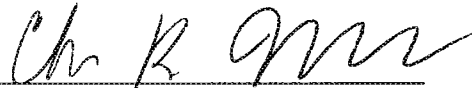
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SUMMARY

In view of all of the above, it is respectfully submitted that the Board reverse the examiner and remand the application with orders to withdraw all of the rejections and allow all the claims.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

A handwritten signature in dark ink, appearing to read 'Ch R Ware', is written over a horizontal line.

Charles R. Ware
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Date: October 22, 2010

Customer No. 27752

(Appeal Brief.doc)
Revised 05/15/2007

CLAIMS APPENDIX

21. A front-fastenable disposable wearable absorbent article, comprising:
- a longitudinal axis; and
 - a back waist region that includes:
 - a first side ear on a first side of the longitudinal axis;
 - a second side ear on a second side of the longitudinal axis; and
 - an intermediate stretch region disposed primarily in the back waist region, between the side ears and having an intermediate lateral tensile modulus;
 - wherein the first side ear includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus.
22. The front-fastenable disposable wearable absorbent article of claim 21 wherein the first side ear lateral tensile modulus is greater than the intermediate lateral tensile modulus.
23. The front-fastenable disposable wearable absorbent article of claim 21 wherein the first side ear lateral tensile modulus is about equal to the intermediate lateral tensile modulus.
25. The front-fastenable disposable wearable absorbent article of claim 21 wherein the second side ear includes a second fastener and a second side ear stretch region having a second side ear lateral tensile modulus that is greater than or equal to the intermediate lateral tensile modulus.
26. The front-fastenable disposable wearable absorbent article of claim 25 wherein the first side ear lateral tensile modulus and the second side ear lateral tensile modulus are each greater than the intermediate lateral tensile modulus.

27. The front-fastenable disposable wearable absorbent article of claim 25 wherein the first side ear lateral tensile modulus and the second side ear lateral tensile modulus are each about equal to the intermediate lateral tensile modulus.

29. The front-fastenable disposable wearable absorbent article of claim 21 wherein the intermediate stretch region is included in a backsheet of the article.

30. The front-fastenable disposable wearable absorbent article of claim 29 wherein an elastomeric element is attached to the backsheet in the intermediate stretch region.

31. A pant-type disposable wearable absorbent article, comprising:

- a longitudinal axis; and

- a first side panel on a first side of the longitudinal axis;

- a second side panel on a second side of the longitudinal axis; and

- an intermediate stretch region disposed primarily in a back waist region of the article between the side panels and having an intermediate lateral tensile modulus;

- wherein the first side panel includes a first side panel stretch region having a first side panel lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus.

32. The front-fastenable disposable wearable absorbent article of claim 31 wherein the first side panel lateral tensile modulus is greater than the intermediate lateral tensile modulus.

33. The front-fastenable disposable wearable absorbent article of claim 31 wherein the first side panel lateral tensile modulus is about equal to the intermediate lateral tensile modulus.

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35. The front-fastenable disposable wearable absorbent article of claim 31 wherein the second side panel includes a second side panel stretch region having a second side panel lateral tensile modulus that is greater than or equal to the intermediate lateral tensile modulus.

36. The front-fastenable disposable wearable absorbent article of claim 35 wherein the first side panel lateral tensile modulus and the second side panel lateral tensile modulus are each greater than the intermediate lateral tensile modulus.

39. The front-fastenable disposable wearable absorbent article of claim 31 wherein the intermediate stretch region is included in a backsheet of the article.

40. The front-fastenable disposable wearable absorbent article of claim 39 wherein an elastomeric element is attached to the backsheet in the intermediate stretch region.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None